

November 1, 1999

FORT JAMES OPERATING COMPANY  
Request for Advisory Ruling

ADVISORY RULING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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Fort James Operating Company (Fort James) requests an advisory ruling from the Commission that Fort James will not be a public utility within the meaning of Title 35-A as a result of the operation of a hydro electric generating facility (hydro facility or dam) located on the Penobscot River in Maine and sales of power from the hydro facility by PP&L Great Works, LLC (Great Works) subsequent to Fort James's transfer of the hydro facility to Great Works. This ruling is necessary by the terms of an Asset Purchase Agreement between Fort James and Great Works for Fort James to complete the transfer of the hydro facility to Great Works. We advise that Fort James will not be a public utility based upon the facts explained below.<sup>1</sup>

The hydro facility was originally constructed and has been operated to date as an integral part of Fort James's Old Town paper mill. All power produced by the dam has been distributed and consumed by Fort James within the mill. Currently the dam provides about 12% of the total electricity consumed at the mill. Fort James meets the remainder of its electrical requirements by in-house steam generation and purchases of power from Bangor Hydro-Electric Company (BHE) at retail.

Because the dam is integrated with the mill operation, whenever Fort James has curtailed or shut down the Old Town mill, it has also curtailed or shut down the hydro facility, so that the dam has never produced more electricity than was needed for consumption at the Old Town mill.

Subsequent to transfer of the hydro facility to Great Works, Fort James and Great Works have agreed that the electric transmission and distribution facilities that make up the mill system will continue to be operated in the same manner as before the transfer until Great Works constructs and places in service a new electrical

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<sup>1</sup> Pursuant to chapter 110, section 603(a) of our rules, the General Counsel recommends that the Commission decide to issue an advisory ruling. As an initial matter, we obviously accept the General Counsel's recommendation and decide to issue an advisory ruling. Pursuant to chapter 110, chapter 603(b), we provided notice to Fort James and Bangor Hydro of our intent to issue an advisory ruling. BHE had already been provided a copy of Fort James's request. Counsel for Fort James indicated that Great Works supported Fort James's request.

interconnection to allow Great Works to transmit power from the Great Works hydro facility directly into the BHE system for ultimate transmission and sale in interstate commerce. Thus, the hydro facility and the paper mill will continue to be operated so that the power output of the hydro facility will never exceed the electrical consumption at the Old Town mill. Until the new interconnection is installed and placed in service, the power generated at the hydro facility will flow directly into the mill system for Fort James' consumption. If operations at the paper mill are curtailed or shut down, the electrical output of the hydro facility will be reduced accordingly.

Fort James represents that the only change from the current operations will be one of transactional form. At the output side of the generator, the power will be metered and sold to BHE at wholesale for subsequent delivery and sale to Fort James at retail. Great Works will own all lines from the generating unit to the meter interface, where it will sell the power to BHE for delivery to Fort James at retail. Fort James will own the facilities down "stream" of the meters, which are part of its mill system.

Fort James supplied a schematic diagram showing the location of key facilities and power flows from the hydro facility and into the Old Town mill distribution system, which is attached as Exhibit A. As described above, we interpret Exhibit A to mean that the lines from the hydro facility to the new BHE interconnection will be owned by Great Works.

Once Great Works completes its new electrical interconnection with BHE, Great Works will be able to deliver power from the hydro facility through the new interconnection onto the interstate transmission grid. At that time, Great Works will be able to sell its power for resale or at retail outside of Maine or, after Maine implements retail access on March 1, 2000, to sell its power to retail customers in Maine.

If the hydro facility is operated and the power generated from the hydro facility is sold and transmitted in the manner described by Fort James in its request, we are of the opinion that Fort James will not be a public utility within the meaning of Title 35-A. As described by Fort James, all Fort James's electric facilities are used only to distribute the electric energy from a point where the electricity is received either from the Great Works hydro facility or from connections with BHE to within its own mill system for its own use. Thus, Fort James does not receive compensation for its electric facilities nor are those facilities put to a public use. Under these circumstances, Fort James is not an electric utility within 35-A M.R.S.A. § 102(5)<sup>2</sup> nor will Fort James fit the definition of transmission and distribution utility. 35-A M.R.S.A. § 102(20-B).<sup>3</sup>

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<sup>2</sup> Until March 1, 2000, electric utilities are public utilities. In pertinent part, electric utility is defined as:

every person, ... owning, controlling, operating or managing any electric plant for compensation within this State, except where electricity is generated on or distributed by the

Please be aware that chapter 110, section 604 of our rules provides that:

No advisory ruling shall constitute res judicata or legal precedent with respect to the issues raised before the Commission. In any subsequent enforcement action initiated by the Commission, however, any person's justifiable reliance upon the ruling shall be considered in mitigation of any penalty sought to be assessed.

Dated at Augusta, Maine, this 1<sup>st</sup> day of November, 1999.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:

Welch  
Nugent  
Diamond

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producer through private property alone solely for its own use or the use of its tenants and not for sale to others.

<sup>3</sup> After March 1, 2000, transmission and distribution utilities become public utilities and electric utilities are removed from the definition of public utility. In pertinent part, transmission and distribution utility is defined as:

a person, ... owning, controlling, operating or managing a transmission and distribution plant for compensation within the State, except where the electricity is distributed by the entity that generates the electricity through private property alone solely for that entity's own use or the use of the entity's tenants and not for sale to others.